

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

NORTHERN NATURAL GAS
COMPANY,

Plaintiff,

vs.

80 ACRES OF LAND IN THURSTON
COUNTY, NEBRASKA, et. al.;

Defendants.

8:17CV328

ORDER

Plaintiff's has filed a condemnation action for extending natural gas pipeline easements through Indian lands located in Thurston County, Nebraska. Nolan J. Solomon holds an interest in two parcels subject to condemnation and described as:

SW1/4 SW1/4 Section 1, Township 25 North, Range 8 East of the 6th P.M., Thurston County, Nebraska ("Allotment No. 742-2" or "Parcel One").

NW1/4 SW1/4 Section 1, Township 25 North, Range 8 East of the 6th P.M., Thurston County, Nebraska ("Allotment No. 742-4" or "Parcel Two").

(Filing No. 1).

Solomon filed an answer and counterclaim, alleging paragraph 9 of the Complaint alleges Plaintiff filed an application for right of way on Indian lands, but this statement is false. Solomon's counterclaim seeks compensatory damages for the taking and use of Solomon's property, and punitive damages for alleged bad faith in negotiating a price. Plaintiff moved to strike the Answer and

Counterclaim as untimely filed and as raising a counterclaim which is not permitted under Rule 71.1 of the Federal Rules of Civil Procedure, (Filing No. 19). Plaintiff has also moved to file an Amended Complaint (Filing No. 26).

Plaintiff's proposed First Amended Complaint is nearly identical to the original Complaint. Only paragraph 9 was changed. While Plaintiff originally alleged it applied to the Bureau of Indian Affairs ("BIA") for renewal of its rights of way, the new paragraph 9 alleges Plaintiff submitted its Notice of Intent to Renew to the BIA and initiated the application process. This change may moot allegations within Solomon's Answer and Counterclaim. Moreover, if the Amended Complaint is filed, Solomon will have another chance to file an Answer, thus mooting Plaintiff's claim that the Answer was untimely.

Accordingly,

IT IS ORDERED:

- 1) Plaintiff's motion to file an Amended Complaint (Filing No. 26), is granted. Plaintiff's proposed Amended Complaint, a copy of which is attached to its motion, shall be filed on or before February 15, 2018.
- 2) Any answer or response to the Amended Complaint shall be filed on or before March 1, 2018.
- 3) Plaintiff's motion to strike Solomon's Answer and Counterclaim, (Filing No. 19), is denied as moot.

4) The United States' motion to stay case progression and discovery, (Filing No. 28), is granted. Discovery is stayed pending further order of the court.

February 8, 2018.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge